SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

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SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 TYPE OF CONTRACT – ITEMS BEING ACQUIRED

This is a cost-plus-incentive fee (CPIF) completion Contract. The Contract provides incentive fees for cost performance, schedule performance, and operational performance.

The Contractor shall, in accordance with the terms of this Contract, provide the personnel, materials, supplies, and services (except as may be expressly set forth in this Contract as furnished by the Government) and otherwise do all things necessary and incident to designing, constructing, and commissioning the Hanford Tank Waste Treatment and Immobilization Plant (WTP) as described in Section C, *Statement of Work*.

B.2 OBLIGATION AND AVAILABILITY OF FUNDS

(a) Subject to the Section I Clause entitled, *Limitation of Funds*, the amount presently obligated under the Contract is shown in the table below.

Appropriation Symbol	B&R No.	Total Budget Authority (BA) [1]	Budget Authority Limit [2]
89X0242.91	39EW01J20	$ 1,279,285,244.89	$1,234,490,183.89
89X0242.91	820202	$ (300,000.00)	$ (300,000.00)
Total		$ 1,278,985,244.89	$ 1,234,190,183.89

1 The sum of Contractor cost reimbursement, fee (payments and accruals), and commitments may not exceed the Total Budget Authority.
2 Budget Authority Limit is the amount of BA available for the sum of Contractor cost reimbursement, fee (payments), and commitments.

The difference between the **Total Budget Authority** column and the **Budget Authority Limit** column is the total amount of the fee accrual for the proportional amount of unpaid fee expected to be earned upon successful Completion of Contract Requirements.

(b) Except as may be specifically provided to the contrary in the Contract (Section I Clause entitled, *Nuclear Hazards Indemnity Agreement*) the duties and obligations of the U.S. Department of Energy (DOE) hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the U.S. Congress that DOE may legally spend for such purposes.

B.3 ALLOWABILITY OF SUBCONTRACTOR FEE

If the Contractor is part of a consortium, joint venture, and/or other teaming arrangement, the team shall share in this Contract fee structure (i.e., separate additional "subcontractor fee" for teaming partners will not be considered an allowable cost under the Contract). If a subcontractor, supplier, or lower-tier subcontractor is a wholly owned, majority owned, or affiliate of any team member, any fee or profit earned by such entity will not be considered an allowable cost under this Contract.

B.4 INCENTIVE FEE STRUCTURE

The DOE objective under this Contract is to receive a completed WTP that meets or exceeds the contractual performance requirements. Incentives are structured to ensure a strong financial motivation for the Contractor to achieve DOE goals for project cost, schedule, and operational performance.

The Contract has three incentive fee elements: Cost Performance Fee (CPF); Schedule Performance Fees; and Operational Performance Fees, as described below and itemized on Table B.1, *Incentive Fee Structure*. The Cost Performance Fee incentive, Schedule Performance Fee incentive, and Operational Performance Fee incentive are calculated independently.

"Actual Cost at Contract Completion" (ACCC) means total allowable cost to achieve "Completion of Contract Work Scope Requirements," (as defined in Section C.6, Standard 5(k)), as may be adjusted through other provisions in this Contract.

(a) Cost Performance Fee (Table B.1A). The Cost Performance Fee can be earned by achieving ACCC below the Cost Performance Incentive Upper Cost Limit (UCL). The Cost Share Ratio for achieving ACCC below the UCL is specified in Table B.1A. If Hot Commissioning is completed and all Completion of Contract Workscope Requirements have been met (as defined in Section C.6, Standard 5(k), the Maximum Cost Performance Fee (MaxCPF) shall be earned if ACCC is equal to or less than the Target Cost (TC). The Minimum Cost Performance Fee shall be earned if ACCC is equal to or greater than the UCL. If the ACCC is greater than the Target Cost and less than the UCL, the Cost Performance Fee earnings are calculated per the formula in the shaded box below :

Condition	Fee Earnings
Actual Cost at Contract Completion Equal to or Greater Than the Upper Cost Limit	Minimum Cost Performance Fee (MinCPF)
Actual Cost at Contract Completion less than the Upper Cost Limit and greater than the Target Cost	MaxCPF minus ((ACCC – TC) times Contractor's Cost Share Percentage 50%) = CPF Earned *(cannot be less than $0)*
Actual Cost at Contract Completion Equal to or Less Than the Target Cost	Maximum Cost Performance Fee (MaxCPF)

A condition precedent to earning Cost Performance Fee in an amount greater than the MinCPF is Completion of Hot Commissioning of the WTP, as specified in Section C.6, Standard 5, Commissioning, paragraph (g)(4)(i). This condition precedent will not impact the Contractor's ability to receive Provisional Fee payments in accordance with Clause B.7 of the Contract. However, if such Completion of Hot Commissioning is not achieved, any previously paid Cost Performance Fee, including Provisional Fee Payments related to Cost Performance Fee shall be repaid to DOE in accordance with Clause B.9.

(b) Schedule Performance Fees (Table B.1B). The Schedule Performance consists of three elements:

- Construction Completion Milestones: The amounts and distribution of such milestones are shown in Table B.1B**.** Achievement of such milestones is not schedule sensitive (i.e., fee will be earned and paid when the applicable milestone is achieved).

- Interim Schedule Milestones – The amounts and distribution of such milestones are shown in Table B.1B. Achievement of such milestones is schedule sensitive (i.e., fee will be earned only if the applicable milestone is achieved on or before the milestone date(s) specified in Table B.1B/Section F).

- Completion of Hot Commissioning – Completion of Hot Commissioning Requirements (as Specified in Section C.6, Standard 5, paragraph (g)(4)(ii)) by the milestone date specified in Contract Section F. Achievement of this Milestone is schedule sensitive (i.e., fee will be earned only if achieved on or before the milestone date specified in Table B.1B/Section F).

All Schedule Performance Fees are earned and final upon achievement of the stated milestone and are not subject to any "clawback" by the Government.

(c) Operational Performance Fees (Table B.1C) – Operational Performance Fees can be earned in specified amounts for achievement of prescribed performance testing rates for cold commissioning and hot commissioning as described below and in Table B.1C and applicable portions of Section C.6, Standard 5. Achievement of each milestone is independently measured and earned.

(1) Cold Commissioning –

- Operational Performance Fee in the amount specified in Table B.1.C(1) can be earned for meeting the Minimum performance testing rates specified in Section C.6, Standard 5, Table C.6-5.1 for all Facilities.

- Additional fee in the amounts specified in Table B.1.C(2) can be earned for meeting the Expected Performance Testing Rates For Each Facility.

- Additional fee in the amounts specified in Table B.1.C(3) can be earned for exceeding the Expected Performance Testing Rates for each Facility. Fee for each Facilitiy is independently measured and earned. Fee will be earned on a proportional basis for rates achieved which exceed Expected rates, up to the Goal performance rates. Fee for each Facility is conditioned upon achievement of rates in excess the Expected rates for both the 5 day and 20/30 day Durations specified in Table C.6-5.1. The fee is calculated proportionally based on the lesser of the two rates achieved for each Facility.

(2) Hot Commissioning. Operational Performance Fee in the amounts specified in Table B.1.C(4) can be earned for Completion of Minimum Performance Testing Rates. Additional fee in the amounts specified in Table B.1.C(4) can be earned for Completion of Expected Performance Testing Rates For Each Facility. Fee for each Facility is independently measured and earned.

All Operational Performance Fees are earned and final upon achievement of the stated milestone and are not subject to any "clawback" by the Government. Any unearned Operational Performance Fee from Cold Commissioning may not be earned during Hot Commissioning.

Table B.1 Incentive Fee Structure

Table B.1A – Cost Performance Fee Incentive

Cost Performance Elements	Amount
Cost Performance Incentive – Target Cost (TC)	$5,000,000,000
Cost Performance Incentive – Upper Cost Limit (UCL)	$5,400,000,000
Maximum Cost Performance Fee (MaxCPF)	$200,000,000
Minimum Cost Performance Fee (MinCPF)	$0
Cost Share Ratio (Contractor/Government) ACCC greater than Target Cost and less than Upper Cost Limit	50/50
Cost Share Ratio (Contractor/Government) ACCC greater than Upper Cost Limit or less than Target Cost	0/100

Table B.1B – Schedule Performance Fee Incentives

Schedule Performance Milestone	Schedule Performance Incentive Fee
Construction Completion Milestones	
Schedule Activity ID 4DH30102A Description: Set the #1 Melter Submerged Bed Scrubber (SBS) Condensate Collection Vessel on it's foundation ready for alignment in the High Level Waste (HLW) facility.	$15,000,000
Schedule Activity ID 4DP155122A Description: Complete the pre-assembly of planning group 3 black cell pipe modules for the Pretreatment Facility.	$15,000,000
Schedule Activity ID 4DP30013 (Tentative ID Number) Description: Set the four Cesium Ion Exchange process vessels on their foundations ready for alignment in the Pretreatment Facility.	$15,000,000
Schedule Activity ID 2CBP110400 Description: Complete the process model (software) for use in the Simulator Facility following substantial completion of the Simulator Facility.	$15,000,000
Interim Schedule Milestones	
Complete Schedule Activity IDs 4DP2402210 and 4DP2402215 by March 31, 2005 Description: Set the four Pretreatment Low Activity Waste (PT-LAW) Feed Receipt Tanks on their foundations in the Pretreatment Facility ready for alignment.	$10,000,000
Complete Schedule Activity ID 4DH46102A2 by December 31, 2007 Description: Move Melter #1 into the High Level Waste Facility.	$10,000,000
Completion of Hot Commissioning	
Completion (as defined in C.6, Standard 5(g)(4)(ii)) By Schedule Milestone M5 Due Date Specified In Contract Section F	$34,000,000

Table B.1 Incentive Fee Structure (Continued)

Table B.1C – Operational Performance Fee Incentives

Operational Performance Milestones		Operational Performance Incentive Fee
1. Cold Commissioning[1] – Meet **Minimum** Performance Testing Rates for all Facilities.		$30,000,000
2. Cold Commissioning[1] – Meet **Expected** Performance Testing Rates for each Facility		
Pretreatment High	$10,000,000	$40,000,000
Pretreatment Low	$10,000,000	
HLW	$10,000,000	
LAW	$10,000,000	
3. Cold Commissioning[1] – Additional Fee for Exceeding **Expected** Performance Testing Rates for each Facility:		
Pretreatment High	$0 for **Expected** up to $3,750,000 for **Goal**	$15,000,000
Pretreatment Low	$0 for **Expected** up to $3,750,000 for **Goal**	
HLW	$0 for **Expected** up to $3,750,000 for **Goal**	
LAW	$0 for **Expected** up to $3,750,000 for **Goal**	
4. Hot Commissioning[2] – Completion of Performance Testing Rates for each Facility		
Pretreatment High	$3,000,000 for **Minimum** Additional $3,500,000 for **Expected**	$26,000,000
Pretreatment Low	$3,000,000 for **Minimum** Additional $3,500,000 for **Expected**	
HLW	$3,000,000 for **Minimum** Additional $3,500,000 for **Expected**	
LAW	$3,000,000 for **Minimum** Additional $3,500,000 for **Expected**	

[1] As described in Contract Section C.6, Standard 5, Table C.6-5.1
[2] As described in Contract Section C.6, Standard 5, Table C.6-5.2

B.5 (RESERVED)

B.6 CHANGES TO TARGET COST, SCHEDULE, AND FEES

(a) Changes to Target Cost, Schedule and Fees will be made in accordance with the Section I Clause entitled, *Changes – Cost Reimbursement - Alternate III* and as expressly provided in other Contract provisions. Whenever the Target Cost is adjusted, the UCL shall be adjusted in the same manner and dollar amount as the Target Cost.

In order to incentivize the Contractor to seek and propose deductive changes in Contract requirements that will reduce total project costs while maintaining plant functionality, the following provisions are provided for adjustments of Target Cost and Cost Performance Fee. Notwithstanding any language to the contrary in the Section I *Clause Changes – Cost Reimbursement – Alternate III* or other Contract provisions:

For Government-directed or Contractor-proposed *deductive* Contract changes, Target Cost and the Upper Cost Limit will not be adjusted until such Changes exceed an estimated cost of $200 million in the aggregate. Upon exceeding $200 million in deductive changes in the aggregate, the equitable adjustment provisions of the Section I Clause entitled, *Changes – Cost Reimbursement - Alternate III* will apply only to the amounts in excess of $200 million.

For Government-directed or Contractor-proposed *additive* Contract changes, Target Cost and the Upper Cost Limit will be adjusted for all additive Changes. Available Cost Performance Fee dollars will not be adjusted upward until such Changes exceed an estimated cost of $100 million in the aggregate (i.e., the Cost Performance Fee curve will be shifted vertically upward only after the total of additive Contract changes exceed $100 million and only by the amount that such changes exceed $100 million). The equitable adjustment provisions of the Section I Clause entitled, *Changes – Cost Reimbursement - Alternate III* otherwise apply.

(b) Subject to the availability of funds, it is the DOE's intention that the funding available for this Contract will be consistent with the funding profile set forth in Section J, Attachment I, *Funding Profile* and that each fiscal year, at least 25% will be made available by Oct. 31, 50% by Jan. 31, 75% by Apr. 30, and the remainder by Jul. 31. To the extent that DOE obligates funds to this Contract on a schedule consistent with this funding profile, availability of funds shall not be a basis for proposed changes to the Target Cost, Cost Performance Fee, and/or Section F milestone dates.

(c) Equitable adjustments for changes described in Article B.10 FEE RISK ALLOCATION, net of any limitations agreed to in B.10(d)(2) and (e)(2), are subject to the aggregate thresholds described in Article B.6(a) for additive ($100M) and/or deductive changes ($200M).

B.7 FEE PAYMENTS

The Contractor will be paid Incremental Fee and Provisional Fee during the period of performance of the Contract. The amount to be paid will be determined as stated in this Clause B.7. Notwithstanding any other contractual provision, nothing in Clause B.7 limits the rights of the Contracting Officer set forth in Section I Clause entitled, *Incentive Fee*.

(a) "Incremental Fee " – means a non-provisional fee that is earned by the Contractor for any completed milestone. Incremental fee is earned, payable and final upon achievement of the applicable milestone and is not subject to any withholding of payment or "clawback" by the Government under any other contract provision, including but not limited to B.8.

(b) "Provisional fee" – A payment of fee that may be made for partial completion of an incentive milestone or work element. Provisional fee payments are subject to repayment

if a specified performance condition is not ultimately achieved as specified in the particular incentive.

(c) Determination of Provisional Fee Payment.

(1) After the effective date of Modification No. A029, the Contractor may invoice for provisional fee in the amount of $3,000,000 (plus applicable taxes) each calendar quarter on March 31, June 30, September 30, and December 31. Subject to other restrictions of this Clause and elsewhere in the Contract, the provisional fee payment requirements shall be as stated in Clause G.4 *Billing Instructions* and I.68 *Prompt Payment*. Quarterly Provisional Fee Payments will resume on June 30, 2003, provided the Contractor has made satisfactory progress against the Level 3 Project Schedule.

(2) The Contractor may invoice a one-time Provisional Fee Payment in the amount of $15,000,000 (plus applicable taxes) upon demonstration of three consecutive monthly reporting periods of satisfactory cost and schedule performance to the March 2003 Project Baseline.

(3) Provisional Fee will be paid in equal amounts on a quarterly basis. The amount paid quarterly will be re-evaluated after October 1, 2006 at which time reasonable projections of final fee earnings can be made. After evaluation the Provisional Fee will be adjusted such that the total cumulative fee payments are not less than 55 percent and not more than 75 percent of the projected final fee earnings based on a cost and schedule performance evaluation using Project Baseline information and other considerations that serve as a predictor of end state performance.

(d) Adjustments to Provisional Fee Payments.

(1) Withholding of Provisional Fee Payments. In the event that the Contractor demonstrates unacceptable performance, the Contracting Officer reserves the right to withhold Provisional Fee payments. The Contracting Officer may also apply appropriate fee reductions or withholdings to subsequent Provisional Fee payments, provided such fee adjustments are identified in writing to the Contractor within 6-months of the date of the event or incident occurrence.

(2) Release of Withheld Provisional Fee Payments. The Contracting Officer may release withheld Provisional Fee pursuant to subparagraph (d)(1) when the Contractor demonstrates that the condition leading to the withholding was corrected. For example, a withheld fee resulting from unacceptable cost or schedule performance may be paid to the Contractor when the Contractor recovers, meaning that the cost and/or schedule performance was acceptable at the end of two consecutive quarters.

(3) Reductions in Provisional Fee Payments. Provisional Fee payments may be reduced in accordance with the provisions in Clause B.8, of this Contract.

(e) Bankruptcy or Other Issues with Guarantor Company(ies). In order to assure the Contractor's ability to repay any Provisional Fee payments that are determined to be in excess of the actual fee earned at the completion of the Contract, the Contracting Officer reserves the right to discontinue Provisional Fee payments, in the event that a guarantor company files bankruptcy or is acquired by other owners, or other events arise with the Contractor's guarantor company(ies) that jeopardizes DOE ability to recover unearned Provisional Fee payments.

(f) Repayment of Bankruptcy Reserve. In the event of a bankruptcy, acquisition by other owner, or other event (Clause B.7(d)), the Contractor shall within 60 days after the event, provide evidence satisfactory to the Contracting Officer that the bankruptcy, change in ownership, or other event does not affect the ability of the Contractor to continue to perform the obligations under the Contract, or affect a material Governmental or DOE interest. Upon receipt of such evidence, the Contracting Officer shall resume making payments of fee unreduced because of the events in Clause B.7(d), and shall release all fee payments withheld due to events described in Clause B.7(d) during the preceding 60 days.

B.8 CONDITIONAL PAYMENT OF FEE, PROFIT, OR INCENTIVES

In order for the Contractor to be eligible to earn all otherwise available fee under the Contract, the Contractor must meet the minimum requirements in paragraphs (a) and (b) of this Section. If the Contractor does not meet the minimum requirements, the Manager, U.S. Department of Energy, Office of River Protection (ORP) or designee, may make a unilateral determination to reduce the Provisional Fee payments, Minimum Cost Performance Fee (but not below $0), any or all of the incentive fees, and/or the Maximum Cost Performance Fee as follows:

(a) Minimum requirements for Environment, Safety, Quality and Health (ESQ&H) Program: The Contractor shall develop, obtain DOE approval and implement an Integrated Safety Management System (ISMS) in accordance with the provisions of Section I Clause entitled, *Integration of Environment, Safety and Health into Work Planning and Execution*. The minimal performance requirements will be set forth in the approved ISMS description document, or similar document. If the Contractor fails to obtain approval of the ISMS or fails to achieve the minimum performance requirements of the System, the Manager, ORP or designee, at his/her sole discretion, may reduce the Provisional Fee payments, Minimum Cost Performance Fee, any or all of the incentive fees, and/or the Maximum Cost Performance Fee by an amount up to the Provisional Fee for the then current and three prior quarters.

(b) Minimum Requirements for Catastrophic Event: If, in the performance of this Contract, there is a catastrophic event (such as, a fatality, or a serious workplace-related injury or illness to one or more Federal, Contractor, or subcontractor employees or the general public, loss of control over classified or special nuclear material, or significant damage to the environment), the Manager, ORP or designee may reduce the Provisional Fee payments, Minimum Cost Performance Fee, any or all of the incentive fees, and/or the Maximum Cost Performance Fee by an amount up to the Provisional Fee for the then current and three prior quarters. In determining any diminution of fee resulting from a catastrophic event, the Manager, ORP or designee will consider whether willful misconduct and/or negligence contributed to the occurrence and will take into consideration any mitigating circumstances presented by the Contractor or other sources.

B.9 FINAL FEE DETERMINATION

Upon "Completion of Contract Work Scope Requirements," (as defined in Section C.6, Standard 5(k)) the Contracting Officer shall determine the total fee earned by the Contractor consistent with Section I Clause entitled, *Incentive Fee*, Clause B.4, and Clause B.8, of the Contract. If the amount of the total fee earned is less than the total amount of all fee payments to date (including Provisional Fee, Schedule Performance, and Operational Performance payments) previously made to the Contractor, the Contractor shall reimburse DOE the difference. If the amount of total fee earned is more than the total amount of all prior payments (including Provisional Fee, Schedule Performance, and Operational Performance payments) previously made to the Contractor, DOE shall pay the Contractor the difference

B.10 FEE RISK ALLOCATION

Except as set forth below and in Article B.6(a), fee risks for changes under Clause I.82 *Changes – Cost Reimbursement – Alternate III*, and other applicable Contract provisions addressing equitable adjustment, shall be in accordance with the applicable Contract provisions(s). Equitable adjustments for the below-specified situations shall be subject to further limitations, clarifications and modifications provided below:

(a) Site Services and Interface Control Documents (ICD).

A contract change (subject to equitable adjustment in accordance with Clause I.82) shall be deemed to have occurred as the result of any changes in requirements regarding use of site services, including revisions to ICD's, both express (directed) and constructive. The Contractor shall use its best reasonable efforts to minimize and mitigate any such performance impacts.

(b) Waste Delivery

A contract change (subject to equitable adjustment in accordance with Clause I.82) shall be deemed to have occurred as the result of failure to deliver waste feed in conformance to waste feed specifications, and/or failure to deliver feed in the quantity and/or timing necessary to support commissioning activities.

(c) Changes in Laws, Regulations, Codes, Standards and Directives

A Contract change (subject to equitable adjustment in accordance with Clause I.82) shall be deemed to have occurred as the result of any changes in laws, regulations, codes, standards and Directives (other than Regulatory Actions covered by paragraph (d) below) in accordance with the Changes clause.

(d) Regulatory Actions.

(1) A Contract change (subject to equitable adjustment in accordance with Clause I.82) is deemed to have occurred upon unreasonable regulatory delays/interpretations/demands/new requirements in responding to and/or approving permit and other applications ("Regulatory Actions") after reasonable collaboration with DOE to avoid such impacts. This includes, but is not limited to, impacts resulting from implementation of Maximum Available Control Technology (MACT) standards.

(2) Absent Contractor's reasonable collaboration with DOE to avoid such impacts, Contractor shall not be entitled to an equitable adjustment to Target Cost or Cost Performance Fee for the first $5,000,000 of impact for any such single regulatory action (per occurrence).

(e) Technology.

(1) A contract change (subject to equitable adjustment under Clause I.82) is deemed to have occurred as the result of shortcomings or failures in the performance of process technologies that were not anticipated after best reasonable design and Research and Technology (R&T) efforts in accordance with sound industry practice (e.g., design professional standard).

(2) Should the Government demonstrate the Contractor's failure to use sound industry practice (e.g., design professional standard), Contractor shall not be entitled to an equitable adjustment to Target Cost or Cost Performance Fee for

the first $10,000,000 of impact for any such single technology shortcoming or failure (per occurrence).

(f) Subcontractors/Suppliers

The Contractor shall bear the full fee risk of performance of all subcontractors, suppliers, and vendors; except as specified below. With respect to IBC (the specified ion exchange process resin supplier), a Contract change (subject to equitable adjustment under Clause I.82) is deemed to have occurred:

(1) If, after using best reasonable efforts to manage the Contractor's relationship with IBC, resin cost increases above the March 2003 Project Baseline; or

(2) If IBC fails to perform delivery of the specified resins in the quality, quantity, and time specified in the schedule, or;

(3) For any additional effort necessary to obtain and qualify an alternate resin supplier above that estimated in the March 2003 Project Baseline.

(g) Disposition of Government Property

The Target Cost assumes that cost or salvage value, as applicable, of excess government property, such as and including spare parts and supplies not consumed during commissioning and limited operations and construction equipment purchased as a direct cost to support the project, would be credited against the ACCC in accordance with FAR 52.245-5(i). In the event that excess government property is dispositioned in any manner other than through sale, the ACCC will be equitably adjusted for the cost or salvage value of said property.

(h) RFP Deficiencies and Due Diligence Review

Except as otherwise set forth in (a), (b), (c), (d), (e) and (f) above, the Contractor shall bear the full fee risk for cost and schedule impacts resulting from any actual or purported deficiencies, whether or not known to Contractor and whether or not such deficiencies were identified by Contractor during its due diligence review under Section C.5. (a)(3), which arise out of solicitation defects, specification defects, Conceptual Design defects, or deficient historical pricing or cost estimate information in any form.

Other than as set forth above, the Contractor shall not be entitled to an equitable adjustment for those items described in (d)(2) and (e)(2) above which do not exceed the dollar thresholds provided therein. Provided, however, the Contractor's aggregate fee risk liability under paragraphs (d)(2) and (e)(2) above is limited to the fee risk associated with the first $100,000,000 of aggregate cost impact.